

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANTOLIN ANDREW MARKS,

Plaintiff,

v.

GARY GARMAN *et al.*,

Defendants.

Case No. C07-5282FDB/JKA

ORDER ADOPTING
REPORT AND
RECOMMENDATION

The Magistrate Judge recommends that the Bivens claim regarding Plaintiff's name and records should be dismissed as frivolous. The issue arises because Plaintiff legally changed his name. Nevertheless, the Court agrees with the Magistrate Judge that Plaintiff has no recognized interest in the manner in which the government keeps or stores its records, and the issue of changing the records to reflect the previous name fails to state a claim as a matter of law. Moreover, Defendants have not violated Plaintiff's rights by calling him by the name under which his records are kept, and calling Plaintiff by the name Wayne Rudder is not torture and a violation of the Eighth Amendment.


Plaintiff has not persuaded the Court, that merely making the request is sufficient, and that Freedom of Information Act claims should not be dismissed as unexhausted. Plaintiff has submitted documents that purport to show that he filed a tort claim, although its status is unclear. Accordingly, this case will be re-referred to the Magistrate Judge as to this remaining issue.

1 The Court, having reviewed Plaintiffs' complaint, the Report and Recommendation of
2 Magistrate Judge J. Kelley Arnold, objections to the Report and Recommendation, and the remaining
3 record, does hereby find and ORDER:

- 4 (1) The Court adopts the Report and Recommendation;
- 5 (2) Plaintiff's Bivens Claims fail to state a claim and are **DISMISSED WITH**
6 **PREJUDICE**.
- 7 (3) Plaintiff fails to show he exhausted his Freedom of Information Act claims and admits
8 he made his requests as part of other litigation. The Freedom of Information Act
9 rules do not replace normal discovery rules and a request made as part of other
10 litigation is defective in exhausting plaintiff's administrative remedies. This claim is
11 **DISMISSED WITHOUT PREJUDICE**.
- 12 (4) Plaintiff submits documents that appear to show that he filed a tort claim (although
13 there is no showing that he received a denial from the agency) regarding the issues in
14 this complaint. This matter is **RE-REFERRED** to the Magistrate Judge.
- 15 (5) Plaintiff's Motion for Extension [Dkt. # 31] is **GRANTED**; Plaintiff filed his
16 Amended Opposition (with attachments, including Ex. B) to the Report and
17 Recommendation.

18 The Clerk is directed to send copies of this Order to plaintiff, counsel for defendants,
19 and to the Hon. J. Kelley Arnold.

20 DATED this 11th day of August 2008.

21
22
23
24
25
26
27
28

FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE